



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

JUN 09 2010

Memorandum

Subject: Justification for Other than Full and Open Competition (JOFOC) for Florida's Department of Environmental Protection Laboratory Services for Long Term Operation and Maintenance of Environmental Chemical Warfare Agent Analytical Capability and Capacity.

From: Gloria Kane, Contracting Officer
Emergency Response Service Center 

To: Susan Moroni
Competition Advocate

Attached is a Justification for Other than Full and Open Competition (JOFOC) for the subject requirement. According to the FAR 6.302-3 (a) (2) (i) and as Contracting Officer, I have determined that this requirement is in the best interest of the government. The service being procured is required in order for the Environmental Protection Agency (EPA) to continue to sustain chemical warfare agent analytical capability and capacity. These services will provide analytical capability and capacity where it does exist or is very limited. I am in agreement that the supporting data attached to this file is complete and accurate. If you have any further questions, please do not hesitate to contact me at 202 654-4437 or via email at kane.gloria@epa.gov.

Justification for Other-than Full and Open Competition

(1) Identification of the agency and the contracting activity, and specific identification of the document as a “Justification for other than full and open competition.”

Date: June 03, 2010

Program Office: Office of Solid Waste and Emergency Response
Office of Emergency Management
Homeland Security Laboratory Response Center

Project Officer: Terry Smith
202-564-2908

Title: “Chemical Warfare Agent Laboratory Services”

(2) Nature and/or description of the action being approved.

In the aftermath of the World Trade Center (WTC), Pentagon and Capital Hill anthrax responses, EPA personnel successfully carried out their mission under trying circumstances with the challenge of unprecedented demand on response resources and capacity limitations. One of the most significant capacity problems relates to agency analytical laboratory support. Agency planners and decision-makers identified issues requiring attention as part of the lessons learned from these activities. In addition to lessons learned, EPA’s Office of Emergency Management conducted an analysis of homeland security planning scenarios to refine analytical gap for chemical warfare agents in environmental samples.

In sum, the Florida State Laboratory, as part of this seven member CWA laboratory group, serves to fill the gap found in CWA analytical capability and capacity resulting from the Homeland Security Council scenario analysis. The Florida State Laboratory is a vital asset to achieving the decree set forth through Presidential Directives 9, 10, and 22. However, the Florida State Laboratory requires additional funding to remain an operational entity. Without it, the nation would be left vulnerable to recovering from a CWA attack, putting many American lives in jeopardy. Therefore, it is imperative that OAM award the Florida State Laboratory a contract to operate and maintain this capability and capacity.

(3) A description of the supplies or services required to meet the agency’s needs (including the estimated value)

The purpose of this requirement is to maintain capability and capacity for EPA to provide chemical warfare analyses during a national emergency. To maintain this capability and capacity, the contractor shall participate in analytical studies of chemical

warfare agents including, but not limited to, multi-laboratory validation studies of analytical methods, proficiency testing, analytical method development to support Standardized Analytical Methods (SAM), and throughput studies as will be determined at later dates via technical direction (TD). The contractor will report results and associated quality assurance parameters as specified in a technical direction document.

To initiate capability building, DHS provided approximately \$1.4 million. The laboratories have used this funding for infrastructure improvements, to purchase instrumentation, and to enhance quality management systems. DHS provided additional funding to VADCLS and the Florida State Laboratory to hire and train personnel to build this capacity and to enhance the capability to produce an electronic data deliverable (EDD).

Period of Performance: 5 years. Two year base and three one year option periods.

Estimated Contract Amount: Per Independent Government Cost Estimate (IGCE), the estimated cost is **B.3** for a two-year base period and **B.3** for each of three one-year option periods for a total of **B.3**

Proposed Contractor:

Florida Department of Environmental Protection Laboratory
2600 Blair Stone Road
Tallahassee, FL 32399

(4) An identification of the statutory authority permitting other than full and open competition.

The statutory authority for this contract being awarded without full and open competition is:

- I. FAR Subpart 6.302-3 which implements 41 U.S.C. 253(c)(3) – *Industrial mobilization; engineering, developmental, or research capability; or expert services.*
- II. FAR 6.302-3 Subpart:
(2)(i) maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization.

(5) A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.

Since 2007, DHS and EPA have been jointly operating seven CWA laboratories. As a result of FBI's threat analyses, a satisfactory on-site audit, and the ability to adopt a chemical surety program with the DOD, a finite number of laboratories demonstrated the ability to analyze CWAs.

An agreement between DHS and EPA's Office of Emergency Management (OEM) states OEM will assume responsibility for long term operation and maintenance of the seven fixed CWA laboratories (Attachment 4). EPA cannot expand the capability beyond these seven fixed CWA laboratories since there are no other laboratories outside of its surety program with DOD that are performing environmental CWA analysis.

Transitioning to the capability-building step, EPA needed to establish a chemical surety program with the Department of Defense (DOD). Because of international treaty restrictions, distribution of CWA is extremely limited to laboratories outside of those contracted to DOD. This aspect is what separates CWA compliant laboratories from laboratories that processes routine chemical samples. The chemical surety program would enable the EPA to access CWAs in the ultra-dilute form (10 parts per million or less), a requirement to calibrate instruments and the ability to oversee the capability once established. EPA and DOD signed an interagency agreement in November 2006 (Attachment 1) giving EPA access to ultra-dilute CWAs.

(6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under 5.202 applies.

To facilitate an evaluation of applicant laboratories, an interagency team consisting of members from DHS, EPA and the FBI conducted on-site audits (Attachment 3) to verify information submitted in the proposals, and to also ascertain whether the laboratories were capable of being transitioned to a CWA laboratory. As a result, DHS selected EPA Regions 1 and 3, the Virginia Division of Consolidated Laboratory Services (VADCLS) and the Florida Department of Environmental Protection Laboratory as the initial CWA pilot fixed laboratories because of their satisfactory assessment from the audits.

Based on the same FBI threat analysis DHS and EPA decided to expand geographic coverage for this capability to reflect the continental United States. In 2007, DHS solicited additional laboratories. Four additional laboratories were selected; bringing the total number of pilot CWA fixed laboratories to seven. The selected laboratories were EPA's Region 6, 9, and 10 laboratories, as well as the Florida Department of Environmental Laboratory. Each laboratory sufficiently represented areas targeted in the FBI threat analysis.

(7) A determination by contracting officer that the anticipated cost to the Government will be fair and reasonable.

Based on the Independent Government Cost estimate and in comparison to the prior contract with DHS, it is determined that the anticipated cost to the government is deemed fair and reasonable. Any associated markups are due to the standards cost of

living increase. No profit or award fees are anticipated with the requirement. The contractor's motivation to continue to meet and/or exceed the government's desire to award contractor an option period.

(8) A description of the market research conducted (see Part 10) and the results or a statement of the reason market research was not conducted.

The next step in the process entailed competitively soliciting laboratories interested and qualified in developing this CWA capability. The Department of Homeland Security and EPA decided to limit the solicitation to public laboratories, including Federal and State laboratories. DHS' initial solicitation was in Spring 2006, three laboratories were selected Regions 1 and 3, and the Virginia Division of Consolidated Laboratory Services (VADCLS).

DHS and EPA decided to expand geographic coverage for this capability to reflect the continental United States. In 2007 DHS solicited additional laboratories (Attachment 2). Four additional laboratories were selected based on the results of site audits (Attachment 3); bringing the total number of pilot CWA fixed laboratories to seven. The selected laboratories were EPA Regions 6, 9, and 10 laboratories, as well as the Florida Department of Environmental Protection Laboratory (herein known as the Florida State Laboratory).

(9) Any other facts supporting the use of other than full and open competition, such as:

The subject justification allows EPA to maintain necessary capability and capacity to provide chemical warfare analyses in case of a national emergency. Presidential Directives 9, 10, and 22 require EPA to have sufficient analytical capability and capacity to support responses to terrorist attacks or incidents involving weapons of mass destruction (WMD). To ensure that EPA could meet these homeland security responsibilities, EPA established the Environmental Response Laboratory Network (ERLN) and in 2005 conducted an analysis of several Homeland Security Council scenarios to gauge existing environmental analytical capabilities and capacity. This analysis identified a significant analytical gap for environmental samples contaminated with chemical warfare agents (CWAs).

While the above-referenced Presidential Directives set mandates for an agency to comply, they do not provide monetary assistance. Since, EPA did not have funding necessary to address this gap; a collaborative relationship was created with the Department of Homeland Security (DHS) and EPA to develop capability and capacity in fixed and mobile laboratories. A key component of this collaboration was that DHS would provide initial funding since the bulk of the money would go to making the laboratories CWA compliant. Once established, EPA would then assume responsibility for long term operation and maintenance of the capability and capacity.

(10) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.

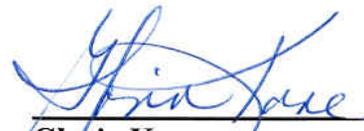
There are no listings of sources in this acquisition.

(11) A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.

Essentially, the barrier to competition exists in a laboratory's ability to be CWA compliant. In order to be CWA compliant a laboratory must satisfy the criteria established for EPA's chemical surety program with DOD, which allows the laboratory to gain access to ultra diluted CWAs. In an effort to limit the distribution of these chemicals, EPA will not grant access to its chemical surety program to any more laboratories outside of those that are already participating in EPA's program, including the Florida State Laboratory. The operating context with which this requirement and justification were brought about is to fill the gap described previously. EPA has an obligation to the American public to be prepared in the event of a CWA attack. These laboratories are deemed necessary in order to maintain and supply CWA analyses to protect the American public in case of a national emergency.

(12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

According to the FAR 6.302-3 (a) (2) (i) and as Contracting Officer, I have determined that this requirement is in the best interest of the government. The service being procured is required in order for the Environmental Protection Agency (EPA) to continue to sustain chemical warfare agent analytical capability and capacity where it does exist or is very limited. I am in agreement that the supporting data attached to this file is complete and accurate.


Gloria Kane
Contracting Officer

06-03-10
Date

Signature Page

For

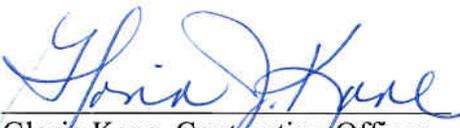
Justification for Other than Full and Open Competition

Florida's Department of Environmental Protection Laboratory Services



Percy Jones, Contract Specialist

6-3-10
Date



Gloria Kane, Contracting Officer

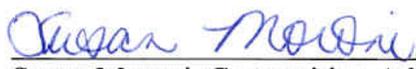


Date



Keith Stewart, Manager

Jun 4, 2010
Date



Susan Moroni, Competition Advocate

6/24/10
Date